CF0000061198

(2)

CrA 1889/97

XII-189 / (Jail)
C. J. P. R. 11/94/2,000

APPEAL OF PRISONER

No. 1146 Name सुबतिया बाई

~~Father's~~ name ~~w/o~~ झुमीराम

Residence गांव गोरधा तह. धमजयगढ़ Age पैंतीस वर्ष

Sentenced to आजीवन कारावास On 25-7-97

Under section 302 भा.दं.वि. by वि.अति.सत्र न्याय. रायगढ़

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement 25.7.97 [Eight Pages]

2 Date on which copy received 25.7.97

3 Date on which Appeal sent 26.7.97

4 Whether the prisoner wishes to be represented or not – Yes / No

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No. 1146 Name सुबतिया बाई

Confined in केन्द्रीय Jail रायपुर

No. 2076 Dated 26.7.1997

Forwarded to the CHIEF JUDICIAL MAGISTRATE RAIGARH

togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

Raikwar
Superintendent
Superintendent
District Jail Raigarh

Date of receipt in 6/8/97 office

Date of receipt record to accompany the 7.8.97

Memo of Appeal to the Appellate court

No 81 Com Dated 12/8/97 199

Forwarded to the District & Sessions Judge Raigarh

Lower Court Record @ S.T. No 258/95 dt. 25-7-97 File A, B and (2) Cri. case No. 360/95 dt. 16-10-95 File A, B of State by Subedia Bai.

पृथ्य न्यायिक दंडाधिकारी

Date of receipt in Appellate Court

(P. T. O.)

(14)

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1889 of 1997

Smt. Subatiya Bai

- Versus -

State of Madhya Pradesh (now Chhattisgarh)

JUDGMENT FOR CONSIDERATION

Sd/-
JUDGE
21-4-2006

HON'BLE MR. JUSTICE DHIRENDRA MISHRA

Sd/-
Dhirendra Mishra
Judge

POST FOR JUDGMENT ON 22ND APRIL, 2006

Sd/-
L.C. Bhadoo
Judge

(15)

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1889 of 1997

Smt. Subatiya Bai

- Versus -

State of Madhya Pradesh (now Chhattisgarh)

Present: -

Mr. Abhay Tiwari, Advocate : For the appellant.

Mr. U.N.S. Deo, Addl. Public Prosecutor
with Mr. Ravindra Agarwal, Panel Lawyer : For the State/respondent.

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND

HON'BLE MR.DHIRENDRA MISHRA, JJ.

J U D G M E N T

(Delivered on 22ND April, 2006)

The following judgment of the Court was delivered by *L.C. Bhadoo, J.*-

1. By this appeal under Section 374(2) of the Code of Criminal Procedure, appellant Smt.Subatiya Bai has questioned the legality & correctness of judgment of conviction and order of sentence dated 25th July, 1997 passed by learned 2nd Additional Sessions Judge, Raigarh in Sessions Trial No.258/95 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the Indian Penal Code for committing murder of Mangal Sai by setting him on fire, sentenced her to undergo imprisonment for life.

2. The prosecution story, in brief, is that on 29.5.1995 accused/appellant and deceased Mangal Sai were residing in

Village Kondha in the same house, however, their rooms were separate. Mangal Sai kept Saniya Bai as his wife and accused/appellant was the daughter of Saniya Bai from her previous husband. Thereafter, accused/appellant was also married and after marriage accused/appellant along with her husband and children were residing in the backyard of the house of deceased Mangal Sai. Prior to incident, children of deceased and accused had quarreled in connection with mat, therefore, the deceased scolded the children of accused and on account of which accused took away the mat and burn the same. The deceased sat for taking his meal, as the mat was burnt by the accused, therefore, he abused the accused and said that now, where he should sit. When deceased was taking his meal, accused brought a container of kerosene, poured the kerosene on the deceased and set him on fire with the help of stick of matchbox. Mangal Sai was taken to the hospital, however he succumbed to the extensive burn injuries. The matter was reported in the Police Station Dharamjaigarh. The Station House Officer, Police Station Dharamjaigarh registered the case at Sr. No.33/95 under Section 302 of the IPC under Ex.P-1, left for the place of occurrence and prepared the inquest (Ex.P-2) of the body of Mangal Sai after giving notice to the Panchas Ex.P-3. He took into possession the clothes of deceased under Ex.P-4 and prepared the site plan (Ex.P-5). While in police custody accused Subatiya Bai gave memorandum Ex.P-7 regarding plastic container in which kerosene oil was there and from which the accused poured the kerosene on the body of deceased Mangal Sai and in pursuance of that she got recovered the plastic container containing kerosene oil and matchbox under Ex.P-8. The blood stained soil and plain soil were taken into possession from the place of occurrence under Ex.P-9. Merg intimation (Ex.P-11)

was sent to the police station. Dead body of Mangal Sai was sent for postmortem examination under Ex.P-12 to Government Hospital, Dharamjaigarh, where Dr. S.N. Nandan conducted the postmortem examination on the body of deceased and prepared the postmortem report Ex.P-12. Recovered articles were sent for chemical examination to Forensic Science Laboratory, Sagar from where report Ex.P-15 was received.

3. After completion of investigation charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate First Class, Dharamjaigarh, who in turn committed the case to learned Sessions Judge, Raigarh from where learned 2nd Additional Sessions Judge, Raigarh received the case on transfer for trial.

4. The prosecution in order to establish the charge against the accused/appellant examined 15 witnesses. On the other hand, learned Additional Sessions Judge recorded the statement of accused/appellant under Section 313 of the Cr.P.C. in which she denied the prosecution evidence appearing against her.

5. Learned Additional Sessions Judge after hearing the arguments of learned counsel for respective parties, convicted & sentenced the accused/appellant in the manner as mentioned in Para-1 of this judgment.

6. We have heard Mr. Abhay Tiwari, learned counsel for the appellant and Mr. U.N.S. Deo, Addl. Public Prosecutor with Mr. Ravindra Agarwal, Panel Lawyer on behalf of the State/respondent.

7. As far as the involvement of the accused/appellant in crime in question is concerned, there is no direct or ocular evidence in this case, the whole case rests on the circumstantial evidence

i.e. oral dying declaration made by the deceased before the prosecution witnesses and in order to rest the conviction based on the dying declaration, the law laid down by the Constitution Bench of the Hon'ble Apex Court in the matter of **Laxman Versus State of Maharashtra** reported in **(2002) 6 Supreme Court Cases 710** is that:

> "The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason that the requirements of oath and cross-examination are dispensed with and that is why the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, should always must be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court should also decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. What evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind and declaration is voluntary and truthful"

8. Applying the above principles, if we examine the evidence adduced by the prosecution in this case, Asha Kumari (PW-1), who lodged the FIR (Ex.P-1) has stated that on the previous

day some quarrel took place between the children of accused and deceased in connection with mat. Next day morning she went to fetch water and when she returned to the house she saw that his father-in-law was burning, he asked her to put water on him, on which he put water on him. Her father-in-law disclosed that Subatiya Bai has set him on fire after pouring kerosene on his body. After extinguishing fire she went in search of her mother-in-law, when her mother-in-law met they came back to the house and saw that her father-in-law was weeping. He informed all of us that Subatiya Bai has set him on fire and now he will not survive, on which they summoned the Sarpanch and other villagers and they took her father-in-law to Dharamjaigarh Hospital in a motor. Later on, she came to know that her father-in-law died in the hospital. She lodged the report Ex.P-1. She has further stated in the cross-examination that her father-in-law was speaking in Uraon language. PW-6 Ghasidas has not supported the prosecution case but he has stated that Sampati and her mother came to him and stated that Subatiya Bai has set Mangal Sai on fire after pouring kerosene on his body, on which he along with village Sarpanch Shobhram, Jageshwar & Bhugat went to the house of Mangal Sai. Mangal Sai was talking in Uraon language, which he was not able to understand. PW-7 Ku. Sampati Ekka, daughter of deceased, has stated that his father died on 29.5.1995, on that day she went to forest and Subatiya Bai was at the residence. When she returned from the forest at 10.30 a.m. she saw her father in a burnt condition and on enquiry her father disclosed that Subatiya Bai has set him on fire on account of quarrel between the children. Thereafter, villagers came. In the cross-examination of this witness & PW-1 Asha Kumari, the defence has not been able to elicit any circumstance

which makes the evidence of these witnesses unreliable or untrustworthy.

9. PW-9 Sania Bai, wife of deceased Mangal Sai, has stated in her evidence that her husband was teacher and accused Subatiya Bai is her daughter from her previous husband. On 29.5.1995 she went to the forest to fetch the wood, when she returned she saw her husband in a burnt condition and on enquiry her husband disclosed that Subatiya Bai has set him on fire after pouring kerosene on his body. Thereafter, her husband died in the hospital. PW-10 Jageshwar has been declared hostile. PW-11 Vijay Kumar has stated in his evidence that on the fateful day he went to the house of Mangal Sai, he saw him in a burnt condition and he was talking in Uraon language, which he could not understand. PW-12 Bhugatram has stated that on the fateful day he went to the house of Mangal Sai, he saw him in a burnt condition, he was saying that he has been set on fire by his daughter Subatiya Bai and now he will not survive. PW-13 Shobhram has also corroborated the above evidence.

10. Evidence of above witnesses is natural, their presence in the house of deceased Mangal Sai cannot be disputed and in the cross-examination of these witnesses the defence has not been able to elicit any circumstance which shows that Mangal Sai was not in a fit state of mind to give statement or there was any reason before him to implicate Subatiya Bai in a false case. As such, evidence of above witnesses inspires confidence that the deceased gave dying declaration before the above witnesses. Apart from that, the kerosene container was seized at the instance of accused/appellant. Therefore, from the above circumstantial evidence the involvement of accused in committing the crime in question is established.

11. Learned counsel for the accused/appellant argued that postmortem report has not been proved by the doctor, who conducted the postmortem on the body of deceased, as the doctor was retired, therefore, he could not be examined before the trial court. When the evidence of witnesses and other circumstantial evidence is so cogent, consistent and reliable regarding the cause of death and about the involvement of the accused/appellant and if the postmortem report is not proved, the conviction can be based on other circumstantial evidence. As has been discussed above, the deceased made dying declaration before his daughter-in-law Asha Kumari (PW-1), his daughter Ku. Sampati Ekka (PW-7), his wife Sania Bai (PW-9), PW-11 Ajay Kumar, PW-12 Bhugatram & PW-13 Shobram to the effect that accused set him on fire after pouring kerosene on his body, therefore, in the above circumstances even if the postmortem report has not been proved but from the circumstantial evidence it is established that the deceased Mangal Sai died on account of burn injuries caused by the accused by setting him on fire after pouring kerosene on his body.

12. For the foregoing reasons, we do not find any illegality or infirmity in the judgment of the trial court. The appeal is without merit, same is liable to be dismissed and it is accordingly dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

Roshan/-